

STATE OF MICHIGAN
COURT OF APPEALS

FRANK RUSS,

Plaintiff-Appellant,

v

JOHN MAYES, JOHN BENEDICT, ABBEY
WHITE, RON EUBANKS, RICHARD GRAVES
and ELECTRONIC DATA SYSTEMS
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

June 23, 2000

No. 208576

Wayne Circuit Court

LC No. 96-632039-NO

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendants.¹ Plaintiff argues that he established valid claims of age and religious discrimination under the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* and disability discrimination under the Michigan Persons with Disabilities Civil Rights Act (MPDCRA), MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.* We affirm.

Appellate review of a trial court's grant of summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). This Court reviews the record to determine whether defendants were entitled to judgment as a matter of law. *Morales v Auto-Owners Ins*, 458 Mich 288, 294; 582 NW2d 776 (1998); *Phillips v Deihm*, 213 Mich App 389, 398; 541 NW2d 566 (1995). A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek, supra* at 337; *Radke v Everett*, 442 Mich 368, 374; 501 NW2d

¹ Plaintiff originally filed a claim of appeal which was dismissed by this Court. Plaintiff subsequently filed an application for leave to appeal to the Supreme Court. In lieu of granting leave, the Supreme Court vacated the March 9, 1998, order of this Court and remanded the case for an appeal as of right. *Russ v Mayes*, 459 Mich 897; 589 NW2d 277 (1998).

155 (1993). The courts rely on affidavits, pleadings, depositions, or any other documentary evidence in deciding whether a genuine issue of material fact exists. *Rollert v Dep't of Civil Service*, 228 Mich App 534, 536; 579 NW2d 118 (1998). Giving the benefit of doubt to the nonmovant, this Court must determine whether a record might be developed which will leave open an issue upon which reasonable minds could differ. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 618; 537 NW2d 185 (1995).

Under ELCRA, employers may not “[f]ail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race color, national origin, age, sex, height, weight, or marital status.” MCL 37.2202(1)(a); MSA 3.548(202)(1)(a). Under the MPDCRA, employers may not “[f]ail or refuse to hire, recruit, or promote an individual because of a disability that is unrelated to the individual’s ability to perform the duties of a particular job or position.” MCL 37.1202(1)(a); MSA 3.550(202)(1)(a).

To successfully raise a discrimination claim under either the ELCRA or the MPDCRA, the plaintiff must establish a prima facie case of discrimination. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 172-173; 579 NW2d 906 (1998); *Rollert, supra* at 538; *Harrison v Olde Financial Corp.*, 225 Mich App 601, 607; 572 NW2d 679 (1997). It is not until the court concludes that the plaintiff has sufficiently established a prima facie case that a presumption of discrimination arises. *Lytle, supra* at 173.

First, although plaintiff challenges the trial court’s dismissal of his age discrimination claim, plaintiff does not address age discrimination in his brief on appeal. Accordingly, this issue is waived. This Court will not search for authority to sustain or reject a party’s position. *McNeil v Quines*, 195 Mich App 199, 204; 489 NW2d 180 (1992). In any event, plaintiff has not established a prima facie case of age discrimination. Plaintiff admitted in his deposition that he had not applied for any positions since 1991 or 1992, and he provided no record evidence demonstrating that he was discriminated against because of his age.

Nor did the trial court err in dismissing plaintiff’s religious discrimination claim. In order to prove a prima facie case of religious discrimination, plaintiff must demonstrate that: (1) he holds a sincere religious belief that conflicts with an employment requirement; (2) he has informed the employer of the conflict; and (3) he was discharged or disciplined for failing to comply with the conflicting employment requirement. *EEOC v Arlington Transit Mix, Inc.*, 957 F2d 219, 221 (CA 6, 1991).² Here, plaintiff alleged that he wears a beard because he is Jewish and because it honors his deceased grandfather who was also Jewish. During his deposition, plaintiff stated that his primary reason for wearing the beard was to honor his grandfather. Plaintiff admitted that the secular family issue was more important than his personal religious beliefs.

² While this Court is not bound by federal precedent based on Title VII, those precedents analogous to questions presented under the Michigan civil rights act may be considered by this Court. *DeFlavis v Lord & Taylor*, 223 Mich App 432, 437; 566 NW2d 661 (1997).

Plaintiff was also unable to identify any Electronic Data Systems' (EDS) representative whom he informed regarding any religious conflict with the prohibition against facial hair. Indeed, plaintiff testified by deposition that he merely informed middle level managers from EDS that he would not be able to comply with the facial hair prohibition due to "personal reasons."

Plaintiff also failed to inform EDS that he believed he was wearing a beard for religious reasons or that he was being discriminated against because of his religion in any of the civil rights complaints he filed in 1992. In addition, although plaintiff informed defendant John Benedict that his "beard was an issue," there is nothing in the record to indicate that he mentioned to Benedict that he wore the beard based upon a sincerely held religious belief.

Plaintiff also failed to establish that he suffered from any adverse employment action as a result of his conflict with the policy prohibiting facial hair. In his brief on appeal, plaintiff made the general allegation that "there is a policy of discrimination that has affected his ability to get raises and promotions." Plaintiff, however, failed to produce any evidence regarding any raises or promotions that he did not receive because of his beard or for any other reason. Plaintiff's subjective belief and undocumented conjecture are simply not sufficient to establish that he suffered an adverse employment action because of the conflict between his alleged religious beliefs and the EDS policy prohibiting facial hair. *Clark v Uniroyal Corp*, 119 Mich App 820, 826; 327 NW2d 372 (1982); *Bouwman v Chrysler Corp*, 114 Mich App 670, 682; 319 NW2d 621 (1982).

Plaintiff also alleges that he was discriminated against because of his dyslexia. The following elements must be shown by a preponderance of the evidence to establish a prima facie case of disability discrimination: (1) that plaintiff is disabled as defined in the act; (2) that the disability is unrelated to plaintiff's ability to perform his job duties;³ and (3) that plaintiff has been discriminated against in one of the ways delineated in the statute. *Chimielewski v Xermac, Inc*, 457 Mich 593, 602; 580 NW2d 817 (1998). Even assuming arguendo that dyslexia is a disability under the MPDCRA, the trial court in this case properly dismissed plaintiff's disability discrimination claim.

First, plaintiff failed to notify EDS of his need for an accommodation within 182 days after the date plaintiff knew or reasonably knew that an accommodation was needed.⁴ MCL 37.1210(18); MSA 3.550(210)(18). In addition, plaintiff failed to establish that he was discriminated against in any way as a result of his dyslexia. Plaintiff did not produce evidence regarding any raises or promotions that he did not receive because of his dyslexia. Moreover, plaintiff's problems with written communication skills were documented in performance evaluations prior to the malfunction of his computer accommodations. In addition, several other reasons were documented for plaintiff's

³ "Unrelated to the individual's ability" means, with or without accommodation, an individual's disability does not prevent the individual from . . . performing the duties of a particular job or position." MCL 37.1103(l)(i); MSA 3.550(103)(l)(i).

⁴ Plaintiff also failed to offer any support in the trial court for his claim that he suffers from dyslexia.

placement on the Performance Improvement Plan. Plaintiff was observed sleeping at his desk on several occasions and a serious lack of attention to technical detail (other than spelling and grammatical errors) was noted in his work product. Most importantly, plaintiff failed to establish that his supervisors were even aware of his alleged dyslexia. Plaintiff's subjective belief and undocumented conjecture are simply not sufficient to establish that he suffered from discrimination because of his alleged disability. *Clark, supra* at 826; *Bouwman, supra* at 682.

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Richard Allen Griffin